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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,806	10/16/2003	Bryan V. Hunt	86266AJLT	9649

7590 10/30/2006

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EXAMINER

CHEA, THORL

ART UNIT	PAPER NUMBER
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1752

DATE MAILED: 10/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/686,806

Applicant(s)

HUNT ET AL.

Examiner

Thorl Chea

Art Unit

1752

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 October 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: None.
Claim(s) objected to: None.
Claim(s) rejected: 1, 4-12, 14 and 15.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


Thorl Chea
Primary Examiner
Art Unit: 1752

Continuation of 11. does NOT place the application in condition for allowance because: of the reason set forth in the Final Office Action on August 10, 2006. The applicants' argument is based on the value of color of the color tone of produced by a photothermographic material after processing and the statement of Mr. Hunt provided in the Declaration on May 22, 2006. However, the claimed material is directed to the photothermographic material before processing which is similar to that disclosed in WO96/15479. The material claimed contains photosensitive silver halide spectrally sensitized in the Ir region, an non-photosensitive silver source, areducing agent and binder, and wherein the material containing one or more thermally developable imaging layers have a total absorbance of at least 1.0 at an infrared exposure wavelength of from about 700 to 1400 nm to which said material is spectrally sensized. The composition of the material and the the absorbance limitation claimed in the present invention is taught in WO 96/15479 such as being presented in the final office action. The color tone such presented by b^* , a^* and L^* depends not only to the composition of the material before processing, but also with the amount of light and heat exposure. Therefore, the characteristic of the material after processing fails to differentiate the composition of the claimed material and that of the prior art before processing.

The Decalaration on May 22, 2006 shows the differences between the comparative samples and the inventive samples such as the use of difference type of acutance dye, different type of antifoggant, difference amount of 4MPA, the presence of the absence of sulfur sensitization, and different part of BZT. However, the additives and the amount thereof presented in the Declaration are not incorporated in the claims. The scope of the claims encompasses the ingredients and the amount uses in comparative samples and the inventive samples. Moreover, there are no unexpected results shown therein. Supposedly, the additives used in the Declaration are incorporated in the claims, these additives have been known in the art, and the compsoition thereof is at least found prima facie obvious to the worker of ordinary skill in the art in the absence of showing the unexpected results thereof.

The rejection 35 USC 112 is maintained. The applicants' counsels statement such as "the worker of ordinary skill in the art would understand the mete and bounds of claim 1" is not persuasive since it is based on the counsels' assertion. The color tone is based on type of light and the CIELAB system used. There is an different numer of CIELAB system and light of different wavelength associated therewith. The type of CIELAB and type of light used in the determination of b^* , a^* value are not presented in the claims. The claims contains the language "the CIELAB color system". It is unclear as to which "CIELAB color system" is referred to "the CIELAB system". The antecedent basis for "the CIELAB color system" is unclear. It should be change to "a CIELab color system". The term "greater than" in claim 1 is unclear unclear since the specifcation since the specifcation fails to provide a mete and bound between the comparison of both b^* value. Therefore, it is still bilieved that the rejections set forth in the Final Office Action is proper.